

BEFORE THE BOARD OF HEARING AID DISPENSERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed amendment of) NOTICE OF PUBLIC HEARING
ARM 24.150.401 fees, 24.150.501) ON PROPOSED AMENDMENT
examination pass/fail point, 24.150.503) AND ADOPTION
traineeship requirements and standards,)
24.150.510 transactional document)
requirements - form and content, and)
24.150.2202 exceptions, and the adoption of)
NEW RULE I fee abatement)

TO: All Concerned Persons

1. On March 5, 2007, at 9:00 a.m., a public hearing will be held in room 489, Helena, Montana to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Hearing Aid Dispensers (board) no later than 5:00 p.m., on February 26, 2007, to advise us of the nature of the accommodation that you need. Please contact Helena Lee, Board of Hearing Aid Dispensers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2385; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsddhad@mt.gov.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

24.150.401 FEES (1) The fees shall be as follows:
(a) Application fee (includes initial written and practical examination) \$~~225~~ 500
(b) Application fee for licensees from other states ~~75~~ 500
(c) Reexamination -- written ~~170~~ 200
(d) Reexamination -- practical (includes renewal of trainee license) ~~130~~ 550
(e) Original license ~~150~~ 300
(f) Renewal active license ~~275~~ 350
(g) Renewal inactive license ~~100~~ 150
(h) through (3) remain the same.

AUTH: 37-1-131, 37-1-134, 37-1-141, 37-16-202, MCA
IMP: 37-1-131, 37-1-134, 37-1-141, 37-16-202, 37-16-402, 37-16-405, 37-16-406, MCA

REASON: The board has determined that there is reasonable necessity to make the proposed fee changes to comply with the provisions of 37-1-134, MCA, and to keep the board's fees commensurate with program costs. The department, in providing administrative services to the board, has determined that unless the licensure fees are increased as proposed, the board will have a shortage of operating funds by the 2007 licensure renewal period. The board is proposing to increase the application fee for licensees from other states to be consistent with the fee for licensure by examination. Applications from other states are processed in exactly the same manner and require the same amount of staff and board time as applications for licensure by examination. The board estimates that the fee changes will affect approximately 112 persons (94 licensees and 18 new applicants) and will result in an estimated \$11,165 increase in annual revenue.

24.150.501 EXAMINATION - PASS/FAIL POINT (1) remains the same.

(2) The passing score on the written examination shall be ~~70~~ 75 percent. The written examination shall include a Montana jurisprudence section.

(3) Each section of the oral and practical examination must be passed by a minimum grade of ~~70~~ 75 percent. An applicant who fails any section only has to retake section(s) failed.

(4) remains the same.

AUTH: 37-1-131, 37-16-202, MCA

IMP: ~~37-16-403~~, 37-16-405, 37-16-406, MCA

REASON: The board has determined that reasonable necessity exists to amend the passing scores required for board licensure by examination. The board has historically used the International Institute for Hearing Instruments Studies written and practical examinations which require a passing score of 75 percent. The board is updating the rule to achieve consistency with these exam requirements and to clarify that the Montana jurisprudence written exam also demands a 75 percent passing score. Authority and implementation cites are being amended to provide the complete sources of the board's rulemaking authority and to remove reference to a repealed statute.

24.150.503 TRAINEESHIP REQUIREMENTS AND STANDARDS (1) and (1)(a) remain the same.

(b) have not had a final order of disciplinary action entered against ~~his or her~~ the hearing aid dispenser's license, in this or any state, in the two years preceding the request to sponsor a trainee.

(2) remains the same.

(3) A trainee who loses ~~his or her supervisor~~ supervision for any reason shall immediately cease practice and shall not continue in a trainee status with a new supervisor until the trainee receives written approval from the board.

(4) remains the same.

(5) A daily log, provided by the ~~board office~~ department, must be kept by the trainee, showing the date, description of job tasks, and duties. Both the trainee and

the supervisor must sign the log. The log must be submitted to the board office at the end of 90 days and again at the end of 180 days and must be approved by the board prior to the trainee being allowed to take the practical examination.

(6) All written materials distributed by the trainee shall include the trainee's name and title, "trainee" and the supervisor's name, business phone number, and title "supervisor."

AUTH: 37-1-131, ~~37-1-319~~, 37-16-202, MCA

IMP: 37-1-101, 37-1-131, ~~37-1-305~~, 37-16-301, 37-16-405, MCA

REASON: The 2005 Montana Legislature enacted Chapter 467, Laws of 2005 (House Bill 182), an act generally revising and consolidating professional and occupational licensing laws and distinguishing between department and board or program duties regarding licensure, examination and fees that became effective July 1, 2005. The board has determined it is reasonably necessary to amend this rule to implement the legislation and further differentiate between department and board duties. The rule is further amended to make references gender neutral and to comply with ARM punctuation requirements. Authority and implementation cites are being amended to accurately reflect all statutes implemented through the rule and provide the complete and accurate sources of the board's rulemaking authority.

24.150.510 TRANSACTIONAL DOCUMENT REQUIREMENTS - FORM AND CONTENT (1) through (3) remain the same.

(4) Any trainee, who provides service to a patient, must legibly print or type ~~his or her~~ the trainee's name, the designation "trainee," and license number on the document along with the name and license number of the trainee's supervisor.

(5) remains the same.

AUTH: 37-16-202, MCA

IMP: 37-16-303, 37-16-304, MCA

REASON: It is reasonably necessary to amend this rule to make references gender neutral, to comply with ARM punctuation requirements, and to amend the implementation cites to accurately reflect all statutes implemented through the rule.

24.150.2202 EXCEPTIONS (1) remains the same.

(2) The board reserves authority to make written exception for reasons of individual hardship including health, military service, foreign residence, retirement, or inaccessibility to programs.

(3) A licensee who submits medical proof from ~~his or her~~ the licensee's attending physician that ~~he or she~~ the licensee or a member of the licensee's immediate family suffered a serious or disabling illness or physical disability which prevented the licensee from complying with the requirements of the board during the 12 months immediately preceding the annual license renewal date, may be granted an exception.

AUTH: 37-1-131, 37-1-319, 37-16-202, MCA

IMP: 37-1-141, 37-1-306, 37-16-407, MCA

REASON: Authority and implementation cites are being amended to accurately reflect all statutes implemented through the rule, to provide the complete sources of the board's rulemaking authority, and to delete references to a repealed statute. Additional amendments are being made to comply with ARM punctuation requirements and to substitute gender neutral terms for gender specific language.

4. The proposed new rule provides as follows:

NEW RULE I FEE ABATEMENT (1) The Board of Hearing Aid Dispensers adopts and incorporates by reference the fee abatement rule of the Department of Labor and Industry found at ARM 24.101.301.

AUTH: 37-1-131, MCA

IMP: 17-2-302, 17-2-303, 37-1-134, MCA

REASON: The board has determined there is reasonable necessity to adopt and incorporate by reference ARM 24.101.301 to allow the board to authorize the department to perform renewal licensure fee abatements as appropriate and when needed, without further vote or action by the board. The department previously adopted ARM 24.101.301 to implement a means for the prompt elimination of excess cash accumulations in the licensing programs operated by the department.

Adoption and incorporation of ARM 24.101.301 will allow the department to promptly eliminate excess cash balances of the board that result from unexpectedly high licensing levels or other nontypical events. Abatement in such instances will allow the licensees who have paid fees into the board's program to receive the temporary relief provided by abatement. Adoption of this abatement rule does not relieve the board from its duty to use proper rulemaking procedures to adjust the board's fee structure in the event of recurrent instances of cash balances in excess of the statutorily allowed amount.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Hearing Aid Dispensers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsddhad@mt.gov, and must be received no later than 5:00 p.m., March 9, 2007.

6. An electronic copy of this Notice of Public Hearing is available through the department and board's site on the World Wide Web at www.hearingaid.mt.gov. The department strives to make the electronic copy of this Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web

site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Hearing Aid Dispensers administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Hearing Aid Dispensers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsddhad@mt.gov, or made by completing a request form at any rules hearing held by the agency.

8. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

9. Lorraine Schneider, attorney, has been designated to preside over and conduct this hearing.

BOARD OF HEARING AID DISPENSERS
STEVE WILSON, CHAIRPERSON

/s/ DARCEE L. MOE
Darcee L. Moe
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State January 29, 2007